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LIBERTY MUTUAL INSURANCE COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Liberty Mutual Insurance Company,)	Case No.: C 06 2022 SC
)	
Plaintiff,)	STATUS CONFERENCE
)	STATEMENT
vs.)	
)	Date: January 11, 2008
Michael T. Blatt,)	Time: 10:00 a.m.
)	Courtroom: 1
Defendant.)	
)	

Upon completion of the court-ordered mediation on January 7, 2008, Plaintiff, Liberty Mutual Insurance Company, submits the following status conference statement for use at the conference scheduled for January 11, 2008. This statement could not be meaningfully completed until after the conclusion of the court-ordered mediation.

DESCRIPTION OF THE CASE

1. Brief description of the events underlying the action.

This is an insurance coverage action relating to Liberty's defense of defendant Michael Blatt in an underlying construction defect action. Defendant was an additional insured under a policy issued by Liberty to Schnabel Foundation. Subject to a reservation of rights, Liberty defended Blatt under the terms of an endorsement which provided that Blatt was an additional insured under the Liberty policy, but "only with respect to liability arising out of [Schnabel's] operations" Schnabel obtained a defense verdict in the underlying action. Blatt paid the judgment entered against him. However, Liberty paid, under a reservation of rights, the amount of \$300,303.85 which reflected that portion of the judgment representing the fees and costs taxed against Blatt in the underlying action. Liberty filed the instant action to recover that amount, plus additional fees and costs which are not covered under the policy.

2. The principal factual issues which the parties dispute.

Plaintiff Liberty - No material facts are in dispute.

Defendant Blatt – Accounting for monies claimed by Liberty Mutual.

3. The principal legal issues which the parties dispute.

Plaintiff Liberty - The primary legal issues are Liberty's duty to defend Blatt in light of the defense verdict rendered in Schnabel's favor and Liberty's recovery of its payment, under a reservation of rights, of the fees and costs assessed against Blatt in the underlying action and any additional costs and fees which are not covered under the Liberty policy.

1 Defendant Blatt - Blatt alleges that Liberty had a duty to pay the
2 \$300,303.85 awarded against the defendant due to a prevailing party
3 attorney-fee clause as such attorneys' fees award are statutorily defined
4 as costs. Blatt alleges that Liberty had a duty to pay \$303,303.85 as a
5 "supplementary payment" under the terms of their policy, as a cost taxed
6 against the insured and in accord with Prichard v. Liberty Mutual Ins. Co.
7 (2000) 84 Cal.App.4th 890.

8
9 The court has recently ruled on a summary judgment filed by Liberty
10 which has effectively limited trial to the determination of the fees generated
11 after the verdict in the underlying action.

12
13 4. Additional factual issues (e.g. service of process, etc.) which
14 remain unresolved.

15 Defendant was in default on answers to requests for admissions. As
16 consideration for stipulating to relief from the default, and in further
17 consideration of taking off-calendar the motions of defendant and his
18 counsel, defendant agreed to sign a stipulated set of facts. To date,
19 defendant has refused to sign those facts, facts which will be of import to
20 the Court of Appeal and/or upon the hearing of any possible motion to
21 reconsider. If defendant refuses to sign the stipulated facts, plaintiff will
22 move the court for an order finding defendant in default of the requests for
23 admissions.

24
25 5. Parties which have not been served in this action.

26 None.

1 6. Additional parties intended to join.

2 None.

3
4 **ALERNATIVE DISPUTE RESOLUTION**

5 The parties completed a nonbinding mediation before Richard D.
6 Warren, which was not successful. Following the court's ruling on Liberty's
7 motion for summary judgment, the court ordered a further mediation of the
8 case. This was accomplished this past Monday, January 7, 2008, before
9 Margaret Corrigan, a mediator for the Ninth Circuit. The case did not
10 settle.

11
12 **DISCLOSURES**

13 The parties have made the following disclosures:

14
15 1. Witnesses.

16 Michael Blatt

17 Ronald Foreman

18 Michael Barnette

19 Experts in the underlying action

20 Person Most Knowledgeable for Schnabel Foundation

21 Rand L. Chritton

22 Joseph D. Ryan

23 Jacqueline Fagerlin

24 Al Anolik

25 Haig Harris

26 Peter Kane

27 Mary Kayglaspy

2. Documents.

Foreman and Brasso's attorney billing statements
Foreman and Brasso's files relating to the underlying action
Transcripts in the underlying action relating to trial
Pleadings in the underlying action and all documents on file
therewith Non-protected, non-privileged portions of Liberty's
claims file re the defense of Gabbert
Schnabel Foundation files for the underlying action
Ryan and Lifter files for the underlying action

3. Damage Computations.

Liberty's damage computations were set forth in its motion for default judgment, a copy of which was provided to defendant. Additional calculations were set forth in the motion for summary judgment.

4. Insurance Agreements.

A copy of the policy at issue is attached to the complaint filed herein and thus is already in the possession of defendant.

DISCOVERY

The parties agreed to and previously proposed the following discovery plan to the court:

1. Documents. To the extent relevant documents in the parties' possession, custody and control have not yet been exchanged by the parties, each party will produce the documents in its possession within sixty (60) days of the case management conference. Documents obtained from the Marin County Superior Court, including trial transcripts, to the

1 extent requested by both parties, shall be obtained and the costs split
2 evenly between the parties.

3
4 2. Written Discovery. Defendant was in default of requests for
5 admissions. Liberty agreed to set aside the default in exchange for a
6 stipulated set of facts, and defendant has now refused to sign that set of
7 facts.

8
9 3. Witnesses. This was made moot by the agreement of the
10 parties concerning relief from the requests deemed admitted.

11
12 4. Expert Witnesses. This has been made moot.

13
14 **DISPOSITIVE MOTIONS**

15 The court has already heard Liberty's motion for summary judgment.

16
17 **TRIAL SCHEDULE**

18 The case is currently not set for trial as a result of the court's ruling
19 on the summary judgment motion. Any matter remaining to be tried
20 should take less than a day.

21
22 DATED: January 10, 2008

KRING & CHUNG, LLP

23
24 By: 

25 Ronald J. Skocypec

26 J. Christopher Bennington

27 Attorneys for Plaintiff

28 Liberty Mutual Insurance Company

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 38 Corporate Park, Irvine, CA 92606-5105.

On January 10, 2008, I served true copies of the foregoing document(s) described as **STATUS CONFERENCE STATEMENT** on the interested parties in this action, addressed as follows:

Ronald D. Foreman, Esq.
Russell F. Brasso, Esq.
Foreman & Brasso
930 Montgomery St., Ste. 600
San Francisco, CA 94133

☒ BY E-MAIL: By transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 10, 2008, at Irvine, California.



MICHELLE BENNETT

